

Message Text

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DRAFTED BY IO/UNP:FJCRAWFORD:BKM

APPROVED BY IO"ROBLAKE

L/UNA:ASURENA (DRAFT)

L/HR:CRUNYON (DRAFT)

JUSTICE/LEAA:KCARPENTER (DRAFT)

EA:LMCNUTT (SUBS)

EUR:DGOOTT (SUBS)

IO/CMD:GGASTON

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FM SECSTATE WASHDC

TO AMEMBASSY BONN

AMEMBASSY CANBERRA

AMEMBASSY THE HAGUE

AMEMBASSY LONDON

AMEMBASSY ROME

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USMISSION USUN NEW YORK

INFO USMISSION GENEVA

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E.O. 11652: N/A

TAGS:PFOR, UN, SHUM

SUBJECT: FIFTH UN CONGRESS ON PREVENTION OF CRIME AND THE
TREATMENT OF OFFENDERS, GENEVA, SEPTEMBER 1975--PROBLEM OF
TORTURE (AGENDA ITEM 4)

1. GA RES 3218 (XXIX) OF 14 NOVEMBER 1974 ADDRESSED PROBLEM

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OF TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT

OR PUNISHMENT. OPERATIVE PARA 4 OF THIS RES REQUESTED FIFTH CONGRESS TO INCLUDE, UNDER ITEM 4 OF ITS AGENDA, IN THE "ELABORATION OF THE STANDARD MINIMUM RULES FOR THE TREATMENT OF PRISONERS, RULES FOR THE PROTECTION OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT, AND TO REPORT THEREON TO THE GENERAL ASSEMBLY AT ITS THIRTIETH SESSION." STANDARD MINIMUM RULES (SMR) WERE ADOPTED BY FIRST CONGRESS ON PREVENTION OF CRIME IN 1955 AND HAVE NEVER BEEN AMENDED.

2. IN PREPARATION FOR CONGRESS, DEPARTMENT HAS BEEN EXAMINING WAYS TO KEEP UP MOMENTUM GENERATED BY RES 3218 BY FIXING INTERNATIONAL ATTENTION ON CONTINUING PRACTICE OF TORTURE THROUGHOUT THE WORLD. TO THIS END, U.S. IS CONSIDERING PROPOSING RESOLUTION AT CONGRESS THAT WOULD BROADEN SCOPE OF SMR BY MAKING THEM APPLY EXPLICITLY TO ANY

PERSON DEPRIVED OF HIS FREEDOM, REGARDLESS OF WHETHER A CRIMINAL CHARGE HAS BEEN LODGED AGAINST HIM. AS SMR NOW STAND, THERE IS AT LEAST SOME DOUBT THAT THEY APPLY TO PERSONS NOT YET ARRAIGNED OR SUBJECT TO ORDERS OF A JUDGE. SINCE INCIDENCE OF TORTURE IS GREATEST IN IMMEDIATE POST-ARREST PERIOD, WHICH MAY BE WELL BEFORE ARRAIGNMENT, IT IS IMPORTANT TO CLOSE POSSIBLE LOOPHOLE BY MAKING IT CRYSTAL CLEAR THAT SMR APPLY TO ALL RPT ALL PERSONS UNDER DETENTION WHETHER BY JUDICIAL OR EXECUTIVE ACTION. OUR PRELIMINARY VIEW IS THAT LATTER CAN BE ACCOMPLISHED BY SLIGHT AMENDMENT TO SMR RULES 4(1) AND 84(1). ANOTHER LONG RANGE POSSIBILITY MAY BE ADOPTION OF RESOLUTION AT CONGRESS SETTING UP WORKING GROUP TO REVIEW DRAFT PRINCIPLES ON FREEDOM FROM ARBITRARY ARREST AND DETENTION (SEE RES 3218, OPERATIVE PARA 1) WITH AN EYE TO INCORPORATING THOSE ARTICLES DEALING WITH TORTURE INTO THE SMR.

3. ACTION ADDRESSEES, WHOSE GOVERNMENTS WERE, ALONG WITH U.S., AMONG COSPONSORS OF RES. 3218, SHOULD RAISE QUESTION OF CONGRESS AT APPROPRIATE LEVEL OF FOREIGN OFFICE, NOTE OUR PRELIMINARY PREPARATIONS ALONG ABOVE LINES AND SOLICIT INFORMATION AND IDEAS ABOUT THEIR PLANS FOR PARTICIPATION. LIMITED OFFICIAL USE

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4. PLO EXPECTED TO ATTEND CONGRESS AS OBSERVERS. BEARING IN MIND POLITICAL ISSUES IMPLICIT IN TRANSFER OF CONGRESS FROM TORONTO TO GENEVA, POSTS SHOULD REPORT ANY INDICATION THAT POLITICAL ISSUES EXTRANEIOUS TO WORK OF CONGRESS, WHETHER RELATED TO PLO OR OTHER MATTERS, MAY BE RAISED.

5. FOR USUN: YOU MAY WISH SOUND OUT UN MISSIONS OF

ADDRESSEE COUNTRIES ALONG SIMILAR LINES, POINTING OUT
APPROACHES ALSO BEING MADE IN CAPITALS. KISSINGER

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